

1 Camila Cossío (OR Bar No. 191504)
2 Center for Biological Diversity
3 P.O. Box 11374
4 Portland, OR 97211
5 Phone: (971) 717-6727
6 ccossio@biologicaldiversity.org
7 *Admitted Pro Hac Vice*

8 *Attorney for Plaintiff*

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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF NEW MEXICO**

12 Center for Biological Diversity,
13 Plaintiff,
14 v.
15 U.S. Fish and Wildlife Service, et al.,
16 Defendants.

Case No.: 1:22-cv-00796-JHR-JFR

**NOTICE OF VOLUNTARY
DISMISSAL**

[FED. R. CIV. P. 41(a)(1)(A)(i)]

17
18 WHEREAS, in 1995, the Center for Biological Diversity’s (“Center”)
19 predecessor organization, the Biodiversity Legal Foundation, petitioned the U.S. Fish
20 and Wildlife Service (“Service”) to extend the substantive protections of the ESA to the
21 lesser prairie chicken (*Tympanuchus pallidicinctus*) by listing the species;

22 WHEREAS, the Endangered Species Act (“ESA”) required the Service make a
23 finding as to whether the petition presents substantial scientific information indicating
24 that the petitioned action may be warranted within 90 days of receiving Plaintiff’s
25 Petition, 16 U.S.C. § 1533(b)(3)(D)(i);

26 WHEREAS, on June 9, 1998, the Service added the lesser prairie chicken to its
27 candidate list where it waited for years for the Service to promulgate a regulation listing
28 the species as endangered or threatened;

1 WHEREAS, in 2010, the Center and partners sued the Service for failing to meet
2 deadlines under the ESA to timely protect the lesser prairie chicken;

3 WHEREAS, in 2011, the Center reached a stipulated settlement agreement with
4 the Service that required the Service to submit a proposed listing rule for the lesser
5 prairie chicken by 2012;

6 WHEREAS, on December 11, 2012, the Service proposed to list the lesser prairie
7 chicken as a threatened species. 77 Fed. Reg. 73,828;

8 WHEREAS, on April 10, 2014, over a decade since the Center's 1995 petition,
9 the Service published a final rule listing the lesser prairie chicken as a threatened
10 species. 79 Fed. Reg. 19,973;

11 WHEREAS, the following year, an oil and gas industry group brought a lawsuit
12 challenging the 2014 rule. On September 1, 2015, the rule was vacated by the United
13 States District Court for the Western District of Texas, and the Service removed the
14 lesser prairie chicken from federal protection;

15 WHEREAS, on September 8, 2016, the Center and its partners submitted a
16 second petition. In response, the Service published a positive 90-day finding that the
17 petition to list the lesser prairie chicken presents, "substantial scientific or commercial
18 information indicating that the petitioned actions may be warranted." 81 Fed. Reg.
19 86,315;

20 WHEREAS, in 2019, the Center filed another lawsuit challenging the Service's
21 failure to timely determine whether the lesser prairie chicken warrants protection under
22 the Act. The parties entered into an agreement that required the Service to submit a 12-
23 month finding no later than May 26, 2021;

24 WHEREAS, on June 1, 2021, the Service published its 12-month finding that
25 proposed to list two DPS of the lesser prairie-chicken under the Act. 86 Fed. Reg.
26 29,432. The Service proposed to list the Southern DPS as endangered and the Northern
27 DPS as threatened;

1 WHEREAS, on August 11, 2022, Plaintiff provided Defendants sixty (60) days'
2 Notice of its intent to file this suit pursuant to the citizen suit of the ESA, 16 U.S.C. §
3 1540(g)(2)(C), challenging FWS's failure to finalize its proposed rule;

4 WHEREAS, on April 16, 2019, Plaintiff filed this suit after the Service failed to
5 remedy its failure by issuing the final rule;

6 WHEREAS, on November 25, 2022, the Service published the required final rule
7 in the Federal Register, announcing that the Northern DPS of the lesser prairie chicken is
8 listed as threatened and the Southern DPS as endangered.

9 ACCORDINGLY, Plaintiff, through counsel, hereby provide VOLUNTARY
10 NOTICE OF DISMISSAL pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), with prejudice, as
11 Plaintiff is satisfied with the final listing issued on November 25, 2022, and dismissal of
12 this action is in the best interest of the parties and judicial efficiency.

13

14 Respectfully Submitted this 29th day of November, 2022.

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/s/ Camila Cossío

16 Camila Cossío (OR Bar No. 191504)
17 Center for Biological Diversity
18 P.O. Box 11374
19 Portland, OR 97211
20 Phone: 971-717-6427
21 ccossio@biologicaldiversity.org

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23 *Attorney for Plaintiff*

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorney of record.

/s/ *Camila Cossio*

Camila Cossio